

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BENJIE ARCHULETA,

Plaintiff,

vs.

Civ. No. 04-0655 MV/WDS

THE BOARD OF COUNTY
COMMISSIONERS OF SAN MIGUEL
COUNTY, NEW MEXICO, CHRIS NARJA,
SHERIFF OF SAN MIGUEL COUNTY,
NEW MEXICO and CORRECTIONAL
SYSTEMS, INC., a foreign corporation,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Defendants' Motion to Strike Plaintiff's Response to Defendant's Motion to Dismiss or, Alternatively, to File Reply in Support of Motion to Dismiss Out of Time, [**Doc. 18**], filed on December 22, 2004. The Court, having considered the motion, briefs, relevant law and being otherwise fully informed, finds that the motion is well taken and will be **GRANTED**.

BACKGROUND

On April 27, 2004, Plaintiff filed a Complaint against Defendants for personal injuries and damages in the Fourth Judicial District Court. The case then was removed to federal court. The Court held a Scheduling Conference on August 10, 2004 and filed the Initial Pre-Trial Report ("IPTR") on September 17, 2004. After Plaintiff failed to produce his Initial Disclosures, Defendants filed a Motion to Compel Production, or alternatively, for the Court to dismiss the

case. Plaintiff did not respond to this Motion. After that, the Court entered an order on November 12, 2004 requiring Plaintiff to produce the required Initial Disclosures within five days. Plaintiff again did not file the required disclosures. As a result, Defendants filed a Motion to Dismiss on November 22, 2004. On December 9, 2004, after Plaintiff did not respond to the Motion to Dismiss, Defendants filed a Notice of Completion of Briefing.

On December 14, 2004, Plaintiff filed a Response to the Motion to Dismiss, which stated that "Plaintiff's non-responsiveness to the Court's order was not willful because Plaintiff's counsel has never received the Court's Order Granting Defendants' Motion to Compel Plaintiff to Produce Initial Rule 26 Disclosures and was therefore unaware of said order." Plaintiff went on to state that he was submitting his Initial Disclosures concurrent with his Response. The disclosures, however, were not submitted to Defendants until December 16, 2004.

DISCUSSION

Defendants seek to strike Plaintiff's Response to the Motion to Dismiss as untimely pursuant to D.N.M.LR-Civ. 7.6(a), which states that "[a] response must be served within fourteen (14) calendar days after service of the motion." Under this Rule, the deadline for a response may be extended by agreement of the parties. Failure to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion. D.N.M.LR-Civ. 7.1(b).

Defendants filed their Motion to Dismiss on November 22, 2004. Fourteen days later, on December 6, 2004, Plaintiff had not filed a response. On December 9, 2004, Defendants filed a Notice of Completion of Briefing. Plaintiff eventually filed a response on December 14, 2004, twenty-two days after Defendants filed the Motion to Dismiss. This is well outside the time limits

prescribed in D.N.M.LR-Civ. 7.6. Furthermore, Plaintiff did not seek an extension of the deadline with either the Court or Defendants. Finally, in his Response, Plaintiff does not provide any justification for his failure to timely file his response or his failure to seek an extension.

The local rules of this Court are not precatory guidelines; they are mandatory strictures which, if not followed, subject a litigant's suit to dismissal or entry of summary judgment. The Court finds that Plaintiff's failure to file a response within the time frame set forth in the Local Rules is inexcusable, especially as Plaintiff did not even attempt to justify his actions.

CONCLUSION

IT IS THEREFORE ORDERED that Defendants' Motion to Strike Plaintiff's Response to Defendant's Motion to Dismiss or, Alternatively, to File Reply in Support of Motion to Dismiss Out of Time [**Doc. 18**], filed on December 22, 2004, is hereby **GRANTED**. Plaintiff's Response to Defendants' Motion to Dismiss will be stricken.

Dated this 3rd day of February, 2005.



MARTHA VAZQUEZ
U. S. DISTRICT COURT JUDGE

Attorney for Plaintiff:
Anna Aragon

Attorney for Defendant:
Lara L. White
Michael Jahner